

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VINCENT MOSCA,

Plaintiff,

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.

**DEFENDANT CITY OF NEW
YORK’S RESPONSE TO THE
DEFENDANT COLAVITO’S
RULE 72 OBJECTIONS**

17 CV 4327 (SJF)(SIL)

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Defendant City of New York (the “City”) hereby responds to the defendant Francesco Colavito’s (“Colavito’s”) Objections to Magistrate Judge Locke’s Report and Recommendation of December 26, 2018. While the City does not believe that Magistrate Judge Locke intended to rule on the merits of the defendant Colavito’s cross-claims against the City since the City did not move against these cross-claims pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, should this Court adopt Magistrate Judge Locke’s Report and Recommendation as to the dismissal of plaintiff’s federal claims against the City with prejudice, as Magistrate Judge Locke correctly noted, such would “divest this Court of subject matter jurisdiction over the litigation under 28 U.S.C. §§1331 and 1367.” Mosca v. City of New York, et. al., 17 CV 4327 (SJF)(SIL), 2018 U.S. Dist. LEXIS 216885, at *23 n. 9 (E.D.N.Y. Dec. 26, 2018). As such, per Magistrate Judge Locke’s Report and Recommendation, the City respectfully submits that the Court should decline supplemental jurisdiction and dismiss the remainder of the action for lack of subject matter jurisdiction if Magistrate Judge Locke’s Report and Recommendation as to the dismissal of plaintiff’s federal claims is adopted. The defendant Colavito does not even address this issue in his Objections, given Magistrate Judge Locke’s

Dated: New York, New York
January 15, 2019

By: /s/
MARK D. ZUCKERMAN